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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING GROUP
IV LLC; CLEAR SAILING GROUP V
LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**FIRST INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESOR RECEIVER AND COUNSEL
FROM THE INCEPTION OF THE
SUCCESSOR RECEIVER'S ACTIVITIES
THROUGH MARCH 31, 2019**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

I. Relief Requested

On October 11, 2016, this Court entered an Order appointing Sherwood Partners Inc. as the receiver in this case. On February 28, 2019, the Court entered its Revised Order Appointing Receiver (Dkt. No. 469) and appointed Kathy Bazoian Phelps as the replacement receiver

1 (“Receiver”). On March 18, 2019, the Receiver filed an administrative motion for an order
 2 approving the employment of Diamond McCarthy LLP (“Diamond McCarthy”) to serve as general
 3 counsel to the Receiver effective as of February 1, 2019 (Dkt. No. 471-472, 474), which was
 4 approved by the Court on March 20, 2019 (Dkt. No.476).

5 Pursuant to Local Rule 7-11, the Receiver requests that the Court approve this First
 6 Administrative Interim Motion for the payment of fees and expenses of both the Receiver and
 7 Diamond McCarthy from the inception of the successor Receiver’s activities through and including
 8 March 31, 2019 (“Motion”). The Motion is supported by the Declaration of the Receiver and the
 9 Declaration of Lesley Anne Hawes of Diamond McCarthy.

10 The Receiver seeks approval of compensation in the amount of \$46,287.00 for services
 11 rendered from the inception of her activities through March 31, 2019,¹ and reimbursement of expenses
 12 in the amount of \$3,030.33. Additionally, Diamond McCarthy seeks compensation in the amount of
 13 \$16,802.80² for services rendered from February 1, 2019 through March 31, 2019, and reimbursement
 14 of expenses in the amount of \$524.67. This is the first interim fee motion by the Receiver and her
 15 counsel and no prior amounts have been requested or paid to the Receiver or her counsel.

16 The Receiver has conferred with counsel for the Securities and Exchange Commission
 17 (“SEC”), and for the SRA Funds Investor Group, and is advised that they do not oppose the Motion.
 18 A stipulation with all parties was deemed impractical given, among other things, the entry of judgment
 19 against defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11(a)).

20 II. Case Status

21 Prior to the Receiver’s involvement, this case was pending for almost three years. Diamond
 22 McCarthy and the Receiver have worked efficiently and economically to analyze the substantial
 23 history and background of this case, coordinate with the former receiver and its counsel for the
 24 smooth transition of records and information, investigate reports, pleadings, and other materials

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 26 ¹ The Receiver has agreed to a holdback of 20% of this amount so seeks payment of \$37,029.00 at
 27 this time.

28 ² Diamond McCarthy has agreed to a holdback of 20% of this amount so seeks payment of
 \$13,442.24 at his time.

1 pertaining to the assets of the estate, and strategized on moving the case forward. The Receiver has
2 communicated extensively with the SEC, creditors, and investors. The Receiver and her counsel
3 have also analyzed in detail the Revised Distribution Plan and provided feedback on its terms and
4 the implementation of said plan.

5 The receivership estate presently has approximately \$986,136.73 in cash on hand in a
6 checking account, money market account and the segregated Anna Bivona account, subject to
7 known accrued expenses of \$131,461.69 and holdbacks of \$153,884.91. Unencumbered funds in
8 the estate, after deducting expenses incurred through March 31, 2019 total \$700,790.13. Attached
9 to the Declaration of the Receiver as Exhibit "C" is a financial summary showing the cash status of
10 the estate as of March 31, 2019. No funds have been disbursed in this time period.

11 The assets of the receivership estate in addition to cash on hand consistent of shares held by
12 the estate, and shares held by Equity Acquisitions Company ("EAC") in which the estate has an
13 interest. The Receiver has confirmed shares held by the receivership estate at AST and at Wells
14 Fargo Advisors and is in the process of confirming the shares held by the estate through various
15 forward contracts or stock transfer agreements where shares are to be transferred to the estate by
16 third parties. The Receiver has demanded the transfer of 12,500 shares of stock on MongoDB from
17 a third party who is obligated to transfer those shares to Clear Sailing Group IV under an
18 agreement entered into before the Receiver's appointment. The third party has refused to respond to
19 the Receiver's demand and suit may be required to recover the shares or their value, options the
20 Receiver is evaluating.

21 The Receiver has been negotiating with the judgment creditor Progresso Ventures to try to
22 resolve disputes over the amount and treatment of its claim. The Receiver has also advanced
23 negotiations with EAC in an effort to finalize a stipulation for the exchange and disposition of
24 shares owed to the estate by EAC and shares held by the estate that are owed to EAC. The Receiver
25 is trying to confirm the status, location and number of shares in one corporation which, when
26 determined, may allow the Receiver to finalize an agreement with EAC and present it for Court
27 approval. The Receiver and her counsel are also evaluating information regarding the Solis Funds
28 to make specific recommendations regarding the treatment of that entity under the proposed revised

1 distribution plan.

2 The Receiver promptly established a website for the receivership with information for
3 investors and creditors, copies of filings, and notices regarding the successor receiver and the
4 claims process. The Receiver evaluated the prior claims noticing and filing process, and identified
5 investors and other potential creditors who may have claims against the estate but who did not
6 receive notice of the opportunity to file claims. The Receiver sent new notices regarding filing
7 claims to those investors and other potential creditors, including developing a more comprehensive
8 notice list for taxing agencies who might have claims to ensure all potential claims can be
9 addressed. The Receiver has begun her analysis of the filed claims for potential objection.

10 **III. The Receiver's Fee Motion**

11 As detailed in the Declaration of the Receiver, pursuant to the Receiver's proposal for her
12 appointment, and in recognition of the efficiencies and benefits to the estate in her role as Receiver
13 that the Receiver would also be able to directly address legal issues arising in the estate, the
14 Receiver has established two separate Billing Categories (2598-00011 and 2598-00012). By way of
15 this Motion, the Receiver seeks approval of fees and expenses incurred in connection with Billing
16 Category 2598-00011 for the Receiver's professional services pertaining to administration of the
17 case. For this category, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby
18 generating savings to the estate. With respect to 2598-00011, the Receiver has performed 104.6
19 hours of services for total fees of \$43,180.00. Separately, the Receiver has written off 3 hours and
20 \$1,275 of fees. The Receiver has also incurred costs in the amount of \$3,030.33. Attached as
21 Exhibit "A" to the Declaration of the Receiver are true and correct copies of billing statements
22 itemizing the services provided and costs incurred in connection with 2598-00011.

23 Billing category 2598-00012 pertains to administrative services performed by the Receiver.
24 For this category, the Receiver has agreed to charge \$130.00 per hour. With respect to this
25 category, the Receiver seeks compensation in the amount of \$3,107.00 for 23.90 hours of services.
26 The Receiver has included her time in communicating with individual investors in this category,
27 which has been significant, in an effort to keep the costs down. Attached as Exhibit "B" to the
28 Declaration of the Receiver are true and correct copies of billing statements itemizing the services

1 provided in connection with 2598-00011.

2 The Receiver has personally reviewed the billing statements and attested to the accuracy,
3 appropriateness, and necessity of services performed and expenses incurred.

4 **IV. Diamond McCarthy's Fee Motion**

5 As detailed in the Declaration of Lesley Anne Hawes, Diamond McCarthy seeks
6 compensation in the amount of \$16,802.80 and reimbursement of out of pocket expenses in the
7 amount of \$524.67. Services were primarily performed by Ms. Hawes, a partner at Diamond
8 McCarthy. Ms. Hawes's regular hourly rate is \$595.00. However, her services have been charged
9 at a discounted rate of \$425.00. Ms. Hawes was assisted by paralegals Catherine A. Burrow, Tasia
10 H. Pavalis, and Rita R. Fix, whose rates have also been discounted. Attached as Exhibit "A" to the
11 Declaration of Ms. Hawes are true and correct copies of billing statements itemizing the services
12 provided and costs incurred by Diamond McCarthy.

13 Ms. Hawes has personally reviewed the billing statements and attested to the accuracy,
14 appropriateness, and necessity of services performed and expenses incurred.

15 **V. Conclusion**

16 The Receiver and Diamond McCarthy believe that this Motion and the supporting
17 declarations appropriately set forth the significant matters handled, and provide this Court and
18 interested parties with an insightful overview of the scope of services rendered. Thus, the Receiver
19 and Diamond McCarthy respectfully submit that the fees and expenses sought herein are
20 reasonable and that the services rendered were necessary, effective, efficient, and economical.

21 WHEREFORE, Diamond McCarthy and the Receiver seek entry of an order granting the
22 Motion in all respects.

23 Dated: April 15, 2019

DIAMOND MCCARTHY, LLP

24 By: /s/Lesley Anne Hawes
25 Lesley Anne Hawes
26 Counsel for the Receiver
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